

JUDGE'S COPY

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IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

CLARENCE FRANKLIN  
INMATE NO. CU-0660  
SCI - CAMP HILL  
P.O. BOX 200  
CAMP HILL, PA. 17001-0200  
PLAINTIFF

Vs.

PENNSYLVANIA DEPARTMENT OF  
CORRECTIONS  
2520 LISBURN ROAD  
CAMP HILL, PA. 17001-8837  
DEFENDANT

AND

MARTIN F. HORN, IN HIS CAPACITY  
AS SECRETARY OF THE  
PENNSYLVANIA DEPARTMENT OF  
CORRECTIONS, 2520 LISBURN ROAD  
CAMP HILL, PA. 17001-0598  
DEFENDANT

AND

KENNETH D. KYLER, IN HIS  
CAPACITY AS SECRETARY OF THE  
STATE CORRECTIONAL  
INSTITUTION AT CAMP HILL  
2520 LISBURN ROAD  
CAMP HILL, PA. 17001-8837  
DEFENDANT

AND

CORRECTIONAL OFFICER ROBERT VIA:  
INDIVIDUALLY AND AS A  
CORRECTIONAL OFFICER OF THE  
STATE CORRECTIONAL  
INSTITUTION AT CAMP HILL  
2520 LISBURN ROAD  
CAMP HILL, PA. 17001-8837  
DEFENDANT

JOINTLY AND SEVERALLY

CIVIL ACTION NO. 1:CV 00-0238

HONORABLE YVETTE KANE

FILED  
HARRISBURG, PA

JUN 07 2000

MARY E. D'ANDREA, CLERK  
Per 9/8 Deputy Clerk

**PLAINTIFF'S MOTION FOR SANCTIONS AGAINST  
THE DEFENDANTS PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE  
(F.R.C.P.) 11**

**TO THE HONORABLE YVETTE KANE, JUDGE OF SAID COURT:**

AND NOW COMES, Plaintiff, Mr. Clarence Franklin, by and through his attorney, Angelo L. Cameron, Esquire, hereby petitions this Honorable Court for sanctions against the Defendants, pursuant to F.R.C.P. 11, in that Defendants violated F.R.C.P. 5(b), and avers as follows:

1. Plaintiff, proceeding through counsel of record, filed on February 8, 2000, the instant civil rights complaint pursuant to 42 U.S.C. Section 1983, as against said Defendants.
2. On March 2, 2000, Defendants filed a Motion to Dismiss the Complaint, and a supporting brief on March 3, 2000.
3. Plaintiff's counsel of record was not served with the Defendants' Motion to Dismiss nor with the supporting brief by the Defendants.
4. Plaintiff's counsel of record, unaware of any pending Defense Motion, prepared and filed a Motion for Entry of Judgment By Default with this Honorable Court.
5. Plaintiff's counsel became aware of said Motion upon receipt of this Honorable Court's Order dated May 23, 2000.
6. Upon review of said court order, as noted in Footnote 1, "... defendants served

these documents on plaintiff himself rather than on his attorney.” (A true and correct copy of the Court Order dated May 23, 2000, is attached hereto as Exhibit “A”.)

7. Plaintiff’s counsel expended unnecessary time and expense in preparing Plaintiff’s Motion for Judgment By Default, since counsel did not know of Defendants’ Motion to Dismiss.

8. Plaintiff, Mr. Clarence Franklin is an inmate at SCI-Camp Hill, and as noted above, service of Defendants’ Motion to Dismiss was made on him at his jail cell.

9. Plaintiff alleges harassment and consternation committed by a correctional officer knowing of Plaintiff’s lawsuit. (A true and correct copy of Plaintiff’s letter to counsel dated May 22, 2000, is attached hereto as Exhibit “B”.)

10. Defendants has violated F.R.C.P. 5(b), entitled, “SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS (b) Same: How Made.” “Whenever under these rules service is required or permitted to be made upon a party represented by an attorney the service shall be made upon the attorney unless service upon the party is ordered by the court.”

11. No F.R.C.P. 5(b) exceptions apply to the instant matter.

12. F.R.C.P. 11(c) is applicable in the instant matter, in that F.R.C.P. 11(b)(1) is applicable in that said service on the Plaintiff himself was improper, caused harassment, unnecessary delay of litigation, and increased needlessly the cost of litigation.

**WHEREFORE**, for the above-cited reasons Plaintiff prays that this Honorable Court impose sanctions as against the Defendants in the instant matter.

Respectfully submitted,



Angelo L. Cameron, Esquire  
FINCOURT B. SHELTON, & ASSOC., P.C.  
Identification Number 51058

6 North 9<sup>th</sup> Street, Suite 201,  
Darby, Pennsylvania 19023  
(610) 532-5550 Telephone Number  
(610) 532-5558 Facsimile Number

FILED  
MAY 16 2000

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

CLARENCE FRANKLIN,  
Plaintiff,

v.

PENNSYLVANIA DEPARTMENT OF  
CORRECTIONS, ET AL.,

Defendants.

CIVIL NO. 1:CV-00-0238

(Judge Kane)

**FILED**  
HARRISBURG, PA

MAY 23 2000

MARY E. D'ANDREA, CLERK  
Per [Signature]  
Deputy Clerk

ORDER

NOW, THIS 23<sup>rd</sup> DAY OF MAY, 2000, upon consideration of the facts that:

(1) plaintiff, proceeding through counsel, filed the instant civil rights complaint pursuant to 42 U.S.C. § 1983 on February 8, 2000; (2) named as defendants in the complaint are the Pennsylvania Department of Corrections (DOC); Martin Horn, DOC Commissioner; Kenneth Kyler, Superintendent at the State Correctional Institution at Camp Hill (SCI-Camp Hill); and SCI-Camp Hill Corrections Officer Robert Via; (3) on March 2, 2000, defendants filed a motion to dismiss the complaint and a brief in support thereof on March 3, 2000;<sup>1</sup> (4) on March 23, 2000, plaintiff filed an executed return of service for each of the defendants; (5) on May 1, 2000, plaintiff filed a motion for entry of default together with a supporting

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1. It appears that defendants served these documents on plaintiff himself rather than on his attorney. Accordingly, the Clerk of Court will be directed to send the pertinent documents to plaintiff along with this order.

PLAINTIFF'S  
EXHIBIT  
A

brief; and (6) since defendants filed a motion to dismiss the complaint on March 2, 2000, the case is not in a default posture, **IT IS HEREBY ORDERED THAT:**

1. Plaintiff's motion for default (Doc. 9) is DENIED.
2. The Clerk of Court is directed to send a copy of defendants' motion to dismiss (Doc. 4), amended certificate of service (Doc. 5), and supporting brief (Doc. 6) to plaintiff.
3. Plaintiff is directed to file and serve a brief in opposition to defendants' motion within fifteen (15) days of the date of this order or the motion will be deemed unopposed. See M.D. Pa. LR 7.6.
4. Defendants may, if they desire, file a reply brief within ten (10) days of the date plaintiff files his opposing brief.



Yvette Kane  
United States District Judge

YK:mcs

CLARENCE FRANKLIN-C40660, File No.: 3540-499

P.O. Box 200  
Camp Hill, Pa 17001-0200

5-22-00

Fincourt B. Shelton,

I am the above caption and I have a serious problem with a staff member here at SCI Camp Hill SIMU program and you told me in your last letter if I had any problems with any staff members to let you know so you could let the judge on our case know what's going on, so on 5-19-00 C/O Howell wrote in my 17X stating I am loud and disrespectful to staff and also on 5-22-00 C/O Howell wrote the same thing in my 17X again, which he does this to be smart trying to send me back to phase 5 which would be a 9 month set back for me, because I am on phase 2 now getting ready to put in my transfer 5-25-00 which will take about 2 to 3 weeks for me to get out of here, so I would appreciate it if you would let the Judge know what's going on and also he is Sgt. Via's friend so there is no doubt in my mind that Via has him harassing me, because I was also told by a C/O Hartman to watch out for C/O Howell.

Sincerely,

CLARENCE FRANKLIN-C40660

P.O. Box 200

Camp Hill, Pa 17001-0200

PLAINTIFF'S  
EXHIBIT  
"B"

MAY 25 2000

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

CLARENCE FRANKLIN  
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CAMP HILL, PA. 17001-8837  
DEFENDANT  
JOINTLY AND SEVERALLY

CIVIL ACTION NO. 1:CV 00-0238

HONORABLE YVETTE KANE



**PLAINTIFF'S BRIEF IN SUPPORT OF MOTION FOR SANCTIONS  
AGAINST THE DEFENDANTS PURSUANT TO FEDERAL RULE OF CIVIL  
PROCEDURE (F.R.C.P.) 11**

Defendants have violated F.R.C.P. 5(b), entitled, "SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS (b) Same: How Made." "Whenever under these rules service is required or permitted to be made upon a party represented by an attorney the service shall be made upon the attorney unless service upon the party is ordered by the court." No F.R.C.P. 5(b) exceptions apply to the instant matter. F.R.C.P. 11(c) is applicable in the instant matter, in that F.R.C.P. 11(b)(1) is applicable in that said service on the Plaintiff himself was improper, caused harassment, unnecessary delay of litigation, and increased needlessly the cost of litigation.

Rule 11 establishes the standards attorneys and parties must meet when filing pleadings, motions, or other documents in court. It imposes on counsel a duty to look before leaping and may be seen as a litigating version of the familiar railroad crossing admonition to "stop, look, and listen". Lieb v. Topstone Industries, Inc., 788 F.2d 151, 157 (3<sup>rd</sup> Cir. 1986); Gagliardi v. McWilliams, 843 F.2d 81 (3<sup>rd</sup> Cir. 1987).

**WHEREFORE**, for the above-cited reasons Plaintiff prays that this Honorable Court impose sanctions as against the Defendants in the instant matter.

Respectfully submitted,



Angelo L. Cameron, Esquire  
FINCOURT B. SHELTON, & ASSOC., P.C.

Identification Number 51058  
6 North 9<sup>th</sup> Street, Suite 201,  
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(610) 532-5550 Telephone Number  
(610) 532-5558 Facsimile Number

**CERTIFICATE OF SERVICE**

I, Angelo L. Cameron, Esquire, hereby depose and say that on this 5<sup>TH</sup> day of June, 2000, I caused a true and correct copy of Plaintiff's Motion For Sanctions Against the Defendants to be served upon the Clerk of Courts for the United States District Court for the Middle District of Pennsylvania, as well as counsel for the Defendants via United States First Class Mail, postage prepaid as follows:

Ms. Mary E. D'Andrea, Clerk of Courts,  
United States District Court for the  
Middle District of Pennsylvania,  
United States District Courthouse  
228 Walnut Street,  
P.O. Box 983,  
Harrisburg, Pennsylvania 17108

Bill Fairall, Assistant Counsel  
Attorney ID # 20840  
PA Department of Corrections  
Office of Chief Counsel  
55 Utley Drive  
Camp Hill, Pennsylvania 17011

This statement is made pursuant to 18 Pa. C.S.A. Sec 4904 relative to unsworn falsification to authorities.



Angelo L. Cameron, Esquire  
FINCOURT B. SHELTON, & ASSOC., P.C.  
Identification Number 51058  
6 North 9<sup>TH</sup> Street, Suite 201  
Darby, Pennsylvania 19023  
(610) 532-5550 Telephone Number  
(610) 532-5558 Facsimile  
Attorney for Plaintiff